

Preface

Many great books have been written on the topic of legal drafting in recent years and the reader may wonder why I have chosen to write this one. I'd like to explain the specific objectives I've sought to accomplish in this book and how I believe this book is different.

1. Consensus among Authorities. Most drafting books contain very few citations to case law and virtually no citations to the works of other drafting authorities. The lack of references to supporting authority means the recommendations of any author can be, and frequently are, dismissed by the bar as being merely that author's opinion. Consensus has been achieved on most of the techniques presented in this book among those authorities. Because drafters rarely have time to consult multiple treatises to determine whether authorities concur, my first objective is to synthesize best drafting practices by incorporating references to the works of other authorities. Although some members of the bar stubbornly cling to the view that "professors teach and lawyers do," this book joins the list of recent treatises written by authors who have extensive experience in transactional practice.

2. Basic to Advanced. Several excellent drafting books published recently by other authors are intended to serve as reference materials on style for more experienced lawyers. This book is different because it is intended to serve as a "how to" guide for lawyers new to transactional practice. One broad objective of the book is to explain how the drafting process works: how transactional lawyers work from prior documents to produce effective and complete legal documents that protect the client's interests. The book also features advanced drafting techniques for avoiding ambiguity by making better word choices, drafting sentences well, and eliminating contextual ambiguity. After reading this book, a new drafter should be well equipped to create powerful prose in transactional practice.

3. Accurate Examples. Virtually all of the examples, case studies, and exercises included in this book are extracted from real documents used by national law firms and Fortune 500 companies, which helps to accomplish my objectives of familiarizing readers with the actual language of complex provisions they work with in transactional

practice and showing readers how to think critically regarding the language they inherit.

4. Comprehensive Application. A few good drafting books approach the topics of how and why lawyers draft legal documents primarily from the perspective of structuring complicated corporate finance and merger transactions; however, in actual practice, drafting encompasses a much broader array of topics and projects. Since only a tiny fraction of all contracts actually relate to finance and merger transactions, the drafter's role as to "structuring the deal" is largely irrelevant in most drafting projects. The emphasis of this book is drafting *per se* rather than deal-making, and the techniques presented are applicable to all drafting projects whether in real estate; mergers and acquisitions; general corporate practice; business law; lending; corporate finance; or in litigation settlement agreements, waivers, and releases.

5. Practical Orientation. My objective in writing this book is to create a practical guide that is straightforward and straight to the point. While some books are organized around theoretical drafting concepts like "precision" and "concision," this book is organized to emphasize practical techniques: this is the process; do this with words; do this with sentences; do this with context; and so on. I practiced transactional law for almost 25 years and based on my experience, this book contains the information new lawyers need to be successful in transactional practice.

6. Use as a Textbook. In writing this book I've come to understand there is a great divide in publishing between "trade books" and "textbooks." This is a trade book because it is designed for use by lawyers in practice. It seems to me, however, that when the objective is to teach transactional skills in a law school classroom, trade books and textbooks should be virtually identical. I have used this material with both audiences and the response has been consistently enthusiastic. An objective of mine in writing this book is to create a realistic resource that can be used to teach drafting skills to law students. Each of the 14 chapters contains about a week's worth of material, with allowances for classroom discussion of graded assignments and special research projects. I've used this book successfully in my advanced drafting course at UGA, and teaching aides for this book including teaching notes, sample documents, drafting assignments, and grading rubrics are available to law school faculty upon request.